

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL NO. 92-223
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MICHAEL DENT :

MEMORANDUM

R.F. KELLY, J.

JULY 16, 1997

Michael Dent was indicted for conspiracy to distribute cocaine base and possession with intent to distribute cocaine base. On February 4, 1997, a jury returned a verdict of guilty as to conspiracy to distribute Count 1 and not guilty as to possession with intent to distribute Count 2. At the trial Sgt. Stephen Cassidy, a fifteen year veteran of the Philadelphia Police Force, testified that on January 19, 1992 he and his partner were in a patrol car traveling south on 54th Street in Philadelphia. While they were stopped at the intersection of 54th and Sharswood Streets, he observed two males standing outside 5411 Sharswood Street. Money was exchanged and the individual who received the money¹ gave something from a plastic bag to the other individual. The police car then drove to 5411 Sharswood at which time both males ran, one going into the house located at 5411 Sharswood. That individual attempted to close the door behind him but was prevented from doing so by the police. He then let go of the door and ran to the rear of the house, which was the kitchen area, with the police in close pursuit. In the kitchen, Sgt. Cassidy observed

¹later identified as Courtney Golden.

three additional males sitting at a kitchen table which contained numerous drugs and drug paraphernalia. Sgt. Cassidy testified that he observed the Defendant, Michael Dent, sitting at the table in the middle. N.T. 2/03/97, p. 25. They were, in the officer's opinion, bagging cocaine. N.T. 2/03/97, p. 26. The table at which the three men were sitting was approximately three feet by five feet. N.T. 2/03/97, pp. 36, 37. One of the men at the table, Derrick Kelly, bolted and was chased down by Sgt. Cassidy's partner. N.T. 2/03/97, p. 26. All were placed under arrest.

On the table, Sgt. Cassidy identified as Exhibit 3A: a plate with a spoon, a straw and a razor blade with a piece of what appeared to be cocaine base. N.T. 2/03/97, p. 28. Sgt. Cassidy testified further that he was present when these items were placed in a bag.

Exhibit 3B was a bag full of vials with red caps containing an off-white chunky substance and yellow packets containing a powder. N.T. 2/03/97, pp. 28, 29. These items were also seized by Sgt. Cassidy. N.T. 2/03/97, p. 29. Cassidy testified that these items were all taken to the narcotics division where they were field tested for the presence of cocaine base. The test was positive. N.T. 2/03/97, p. 29.

A property receipt was prepared listing the contents of Exhibits 3A and 3B as follows:

ITEM 1: A clear plastic vial sealed with a red cap containing a white chunky substance. Item 1 also contained a yellow tainted heat-sealed packet containing a white powder. Both attached to a card.

ITEM 2: A clear glass plate with approximately three grams of white chunky substance covered with foil, one red handled spoon with residue, one razor blade with residue, one plastic straw with residue.

ITEM 3: Seventeen clear plastic vials sealed with red caps containing a white substance.

ITEM 4: One clear plastic ziplock baggie containing a total of eleven clear plastic vials sealed with red caps containing a white substance.

ITEM 5: Five clear plastic sandwich bags each containing twenty-three clear plastic vials sealed with red caps containing a white substance.

ITEM 6: A clear plastic baggie containing a total of five yellow tainted plastic heat-sealed packets containing a white powder and one clear plastic vial sealed with a gray cap containing a white chunky substance. N.T. 2/03/97, pp. 31, 32.

The above items were all taken by the police officer to the police laboratory and Sgt. Cassidy testified that he obtained them from the police laboratory for trial. N.T. 2/03/97, pp. 32-34.

The government called a forensic scientist, employed by the Philadelphia Police Department, Tamweer Ali who tested the contents of Items 1 through 6. The results of those tests were as follows:

ITEM 1: Contained a total of 106 milligrams of cocaine base. N.T. 2/04/97, p. 8.

ITEM 2: The material on the glass plate was 1.345 grams cocaine base. The spoon, razor blade and straw could not be analyzed. N.T. 2/04/97, p. 10.

ITEM 3: Seventeen vials with red caps total net weight of .971 grams of cocaine base. N.T. 2/04/97, p. 10

ITEM 4: Eleven vials with red caps contained a total net weight of .896 grams of cocaine base. 2/04/97, p. 11.

ITEM 5: One hundred fifteen vials with red caps total weight was 5.803 grams of cocaine base. N.T. 2/04/97, p. 11

ITEM 6: The five yellow plastic baggies contained cocaine salt and weighed .723 grams. The one plastic vial with a gray cap contained cocaine base weighing 49 milligrams. N.T. 2/04/97, pp. 11, 12.

Defendant has filed post-trial motions alleging, inter alia, that the evidence at trial was not sufficient to support the verdict of guilty as to Count I, conspiracy to distribute cocaine base. No brief has been filed by Defendant.

The evidence at trial established more than mere presence or association. The officers first observed Courtney Golden outside of 5411 Sharswood Street involved in what appeared to them to be a drug transaction. When Courtney Golden saw the officers he ran into 5411 Sharswood Street and attempted to close the door behind him to prevent the officers from entering. When this failed, he ran to the kitchen area with the police in close pursuit. In the kitchen, there were three other males seated at a table approximately three feet x five feet containing drugs and

drug paraphernalia for packaging the drugs into vials. Sgt. Cassidy could not say specifically what the Defendant Michael Dent was doing at the time he entered the kitchen but he testified that the others appeared to be in the process of packaging drugs.

In my opinion, the evidence was sufficient to support the jury's conclusion that the Defendant Michael Dent was involved in a narcotics distribution conspiracy and that each of the occupants of the kitchen had constructive possession of the cocaine base and paraphernalia on the table before them. See U.S. v. Davis, 461 F.2d 1026, 1035 (3d Cir. 1972) where the Third Circuit upheld a conviction on similar facts. In Davis, the police entered a three room apartment occupied by appellant and two others. The appellant and a co-defendant were standing next to a table with heroin, glassine bags and measuring paraphernalia. The court found that this evidence revealed someone recently had been packaging heroin, and that the jury reasonably could infer therefrom that the appellant had constructive possession of the heroin. Davis, 461 F.2d at 1036.

For these reasons I find that the verdict was supported by the evidence.

MOTION TO SUPPLEMENT RECORDS

On the eve of trial, counsel for the Defendant filed a motion under Fed. R. Crim. P. 17(c) for a subpoena which sought the personnel file of Sgt. Stephen Cassidy, a government witness. The motion was based on information, allegedly received from a public defender in Philadelphia, that on or about December 27, 1993 a

juvenile case was dismissed in state court because Sgt. Cassidy was allegedly under investigation. The government did not oppose this motion and the court therefore granted it and rescheduled the trial of the case from January 27, 1997 to February 3, 1997.

On February 3, 1997, Howard LeBofsky, Esquire, a Deputy City Solicitor for the City of Philadelphia (the City), provided the court with a copy of Sgt. Cassidy's complete personnel file for in-camera inspection along with a motion to quash the Rule 17(c) subpoena. After I reviewed the personnel file, I granted the City's motion to quash the subpoena and return Sgt. Cassidy's personnel file to Mr. LeBofsky. My review of the file determined that there was nothing contained therein which either constituted Brady material or proper impeachment material.

At the time, I did not think that the defense was entitled to the personnel file of Sgt. Cassidy on the very vague allegations made by defense counsel. However, although the City opposed the subpoena, they nevertheless produced the records in court prior to trial. Because the City did not oppose my viewing the records in camera for Brady or impeaching material, I thought I could moot the entire issue by reviewing the file in camera which I did. Under the circumstances, I do not think that Sgt. Cassidy's personnel file should be added to the record. In *United States v. Navarro*, 737 F.2d 625 (7th Cir.), cert. denied, _____ U.S. _____, 105 S.Ct. 438, 83 LEd.2d 364 (1984), the court held that the speculative assertion that impeaching material may be in a government file did not warrant an order to disclose the contents

of the file or to produce the file for the court's inspection.

Mere speculation that a government file may contain Brady material is not sufficient to require a remand for in camera inspection, much less reversal for a new trial. A due process standard which is satisfied by mere speculation would convert Brady into a discovery device and impose an undue burden upon the district court.

Id. at 631. Andrus was not entitled to the personnel files of the law enforcement witnesses without even a hint that impeaching material was contained therein.

For these reasons I denied the Defendant's motion to supplement the records.

In his post-trial motion, Defendant has included a motion for new trial containing a litany of reasons. None of these allegations were supported by a brief and I found that none of them had merit and they were denied.

It is for these reasons that Defendant's Post-trial Motions were Denied.

Robert F. Kelly,

J.